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Political Subdivision Liability for Flooding Alerts, Warnings, and Signage

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In the wake of the recent Hurricane Harvey flooding in Texas, various political subdivisions are examining whether to provide local alerts or warning systems to help notify residents of potential flooding conditions. These alerts or warnings could be posted on some form of social media by the political subdivision or its agents with the hope that the alerts/warnings would inform Texans of flooding issues in their area, thereby preventing certain loss of life and property due to inaction of or actions taken by people that are otherwise unaware of the location or severity of these dangerous conditions.

These types of alerts or warnings, although altruistic in nature, could potentially lead to additional liability for the political subdivisions. These subdivisions currently do not have a statutory duty to provide these types of flooding alerts or warnings on social media. They also are entitled to certain sovereign or governmental immunity under Texas law. However, taking on this additional responsibility could lead to liability if, for example, there are errors contained in these alerts, there is a failure to make timely posts after people have come to rely on them, or there are other mistakes related to the information contained in these warnings. This paper examines the extent of liability of Texas political subdivisions for undertaking these types of new social media responsibilities, and whether immunity or some other protection can shield them from this liability under Texas law.

SOVEREIGN AND GOVERNMENTAL IMMUNITY

In the mid-1800's, the Texas Supreme Court held that, "no State can be sued in her own courts without her consent, and then only in the manner indicated by that consent."[1] Thus, the State's recognition of sovereign immunity was made by common law. The justification of sovereign immunity is "to shield the public from the costs and consequences of improvident actions of their governments."[2]

Sovereign immunity refers to "not only whether the State has consented to suit, but also whether the State has accepted liability."[3] "Immunity from suit prohibits suits against the State unless the State expressly consents to the suit."[4] "Thus, even if the State acknowledges liability on a claim, immunity from suit bars a remedy until the Legislature consents to suit."[5] "Immunity from liability protects the State from judgments even after the State has consented to suit."[6] "Accordingly, even if the Legislature has authorized a claimant to sue, the State's immunity is retained until it

[1] *Hosner v. De Young*, 1 Tex. 764, 769 (1847).
[2] *Tooke v. City of Mexia*, 197 S.W.3d 335, 332 (Tex. 2006).
[3] *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 696 (Tex. 2003) (citing *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 405 (Tex. 1997)).
[4] *Id*.
[5] *Id*.
[6] *Id*.

acknowledges liability."[7] "Unlike immunity from suit, immunity from liability does not affect a court's jurisdiction to hear a case and cannot be raised in a plea to the jurisdiction."[8]

"Courts often use the terms sovereign immunity and governmental immunity interchangeably. However, they involve two distinct concepts. Sovereign immunity refers to the State's immunity from suit and liability. In addition to protecting the State from liability, it also protects the various divisions of state government, including agencies, boards, hospitals, and universities."[9] "Governmental immunity operates like sovereign immunity to afford similar protection to subdivisions of the State, including counties, cities, drainage [and water] districts, and river authorities."[10]

Sovereign immunity generally bars judicial review of government agency actions. "It is well recognized under Texas law that there is no right to judicial review of an administrative order unless a statute provides a right or unless the order adversely affects a vested property right or otherwise violates a constitutional right."[11] Texas courts have held that there can be no waiver of immunity by a political subdivision by simply accepting the benefits of the contract.[12] However, a political subdivision's conduct can waive governmental immunity when it files an affirmative claim for relief in a lawsuit; the affirmative claim waives immunity on all claims filed against the political subdivision that are "germane to, connected with, and properly defensive to" the political subdivision's affirmative claim.[13] However, because these situations are rare, today most waivers of sovereign/governmental immunity must come from a statutory waiver, where the legislature explicitly waives sovereign/governmental immunity in certain circumstances.

Although sovereign immunity was established by common law, the Texas Supreme Court has expressed that, "the Legislature is better suited to balance the conflicting policy issues associated with waiving immunity."[14] The Texas Legislature can waive a political subdivision's governmental immunity, but the "statute or resolution must contain a clear and unambiguous expression of the Legislature's waiver of immunity."[15] However, "clear and unambiguous" expressions of a waiver are not always self-evident when one examines a statute. For example, the Texas Supreme Court has interpreted the language in Section 49.066(a) of the Texas Water Code, that a district "may sue and be sued" and that "a suit for contract damages may be brought…only on a written contract of the district approved by the district's board," as not being a waiver of governmental immunity.[16]

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[7] *Id*.
[8] *Taylor*, 106 S.W.3d at 696 (citing *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638-39 (Tex. 1999).
[9] *Tooke v. City of Mexia*, 197 S.W.3d 335, 369 n. 11 (Tex. 2006) (quoting *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 n. 3 (Tex. 2003) (internal citations omitted)).
[10] *San Jacinto River Auth. v. Simmons*, 167 S.W.3d 603, 606 (Tex. App.—Beaumont 2005, no pet.).
[11] *Continental Cos. Ins. Co. v. Functional Restoration Assocs.*, 19 S.W.3d 393, 397 (Tex. 2000) (citing *Stone v. Texas Liquor Control Bd.*, 417 S.W.2d 385, 385-86 (Tex. 1967)).
[12] *See Federal Sign v. Texas Southern University*, 951 S.W.2d 401 (Tex. 1997); *General Services Commission v. Little-Tex Insulation Co.*, 39 S.W.3d 591 (Tex. 2001); *Texas Natural Resource Conservation Commission v. IT-Davy*, 74 S.W.3d 849 (Tex. 2002).
[13] *City of Dallas v. Albert*, 354 S.W.3d 368, 376 (Tex. 2011).
[14] *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 696 (Tex. 2003).
[15] *Id*.
[16] *See Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829, 836-38 (Tex. 2010).

One of these clear and unambiguous statutory waivers of immunity is found in Chapter 101 of the Texas Civil Practice & Remedies Code, known as the Texas Tort Claims Act ("TTCA").[17] The TTCA has several provisions that could be utilized to argue liability associated with social media alerts or other warnings.

THE TEXAS TORT CLAIMS ACT

Under the common law, the State and its political subdivisions had complete sovereign/governmental immunity (from suit and liability) with regard to tort claims.[18] However, the Texas Supreme Court has held that the TTCA "provides a limited waiver" of this sovereign/governmental immunity for certain tort claims.[19] For a "governmental unit,"[20] "[t]he Tort Claims Act expressly waives sovereign immunity in three areas:"[21] (1) operation or use of motor-drive vehicles or equipment,[22] (2) premises defects,[23] and (3) "personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law."[24] The Texas Supreme Court has stated that the third area of the immunity waiver, in particular, "is a category especially subject to a broad interpretation."[25] The TTCA only applies to liability for tort actions based on negligence, as it does not waive liability for intentional torts.[26]

POSSIBLE LIABILITY FOR NEGLIGENT FLOODING ALERTS/WARNINGS

In the context of liability associated with social media alerts or warnings for flooding, one could envision suits that fit into the third area of the TTCA immunity waiver. Assume that a river authority in the past has alerted people on social media during rain events as to whether there were dangerous flooding conditions present due to these events. A negligent social media post is made stating that no flooding is occurring in the area. Then, relying on that post, a person ventures out and is killed in the flooding. Examining this situation in the context of the TTCA, a "personal injury or death" has occurred, a "river authority" is explicitly defined as a "governmental unit" under the Act, and it can be argued that the death was caused, at least in part, by the river authority's social media post. The question will be whether posting on social media is "use of tangible personal property."

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[17] Tex. Civ. Prac. & Rem. Code § 101.001, *et. seq*. (originally enacted as Tex. Rev. Stat. Art. 6252-19).
[18] *Lowe v. Tex. Tech Univ.*, 540 S.W.2d 297, 298 (Tex. 1976).
[19] *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225 (Tex. 2004).
[20] The TTCA explicitly states that a "government unit" comprises "a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation district, public health district, and river authority." Tex. Civ. Prac. & Rem. Code § 101.001(3)(B).
[21] *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225 (Tex. 2004).
[22] Tex. Civ. Prac. & Rem. Code § 101.021(1).
[23] Tex. Civ. Prac. & Rem. Code § 101.022.
[24] Tex. Civ. Prac. & Rem. Code § 101.021(2).
[25] *Trinity River Auth. v. Williams*, 689 S.W.2d 883, 885 (Tex. 1985) (citing *Salcedo v. El Paso Hospital Dist.*, 659 S.W.2d 30, 32 (Tex. 1983).
[26] *See City of Watauga v. Gordon*, 434 S.W.3d 586, 592-93 (Tex. 2014).

In *Tex. Dep't of Corrections v. Winters*,[27] the plaintiffs sued the Texas Department of Corrections under the TTCA for sending them a telegram informing them that their husband/father had died when, in fact, he had not died.[28] The Texas Department of Corrections argued that the use of a "keyboard, computer terminal, and telephone used to order the telegram and the actual telegram" was not "use of tangible personal…property" under the TTCA.[29] The Court of Appeals disagreed, stating that the "machine used to transmit the message was certainly tangible personal property, and its misuse falls within the Act."[30]

The court in *Winters* relied on the holding in *Salcedo v. El Paso Hosp. Dist.*,[31] where a plaintiff attempted to recover damages under the TTCA for the death of her husband. Mrs. Salcedo alleged that the employees of the hospital misused cardiac monitoring equipment and misused the electrocardiographic equipment by improperly reading and interpreting the graphs and charts produced by the equipment, causing her husband's death from a myocardial infarction.[32] Mr. Salcedo was examined for severe chest pains.[33] He was given an electrocardiogram test, which allegedly showed a "classic pattern of myocardial infarction (heart attack)."[34] Despite these results, Mr. Salcedo was released from the hospital and collapsed shortly after returning home.[35] Mr. Salcedo was pronounced dead upon his return to the emergency room.[36] The hospital filed special exceptions that the pleadings "failed to allege the injuries were caused from some condition or use of tangible property which the Hospital District furnished in a defective condition."[37] The trial court granted the special exceptions, dismissing the case, and the court of appeals affirmed the judgment of the trial court.[38]

The Texas Supreme Court reversed the judgments of the lower courts. The Supreme Court held that "allegations of either defective or non-defective property could invoke the waiver provision."[39] "The statutory language 'condition or use' of property implies that such property was furnished, was in bad or defective condition *or was wrongly used*."[40] "We hold, therefore, an allegation of defective or inadequate tangible property is not necessary to state a cause of action under the Act if 'some use' of the property, rather than 'some condition' of the property, is alleged to be a contributing factor to the injury."[41] The Texas Supreme Court explained that, "the proximate cause of the damages for death or personal injury must be the negligence or wrongful act or omission of the officer or employee acting within the scope of his employment or office. The negligent conduct, however, must involve 'some condition or some use' of tangible property

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[27] 765 S.W.2d 531 (Tex. App.—Beaumont 1989, writ denied).
[28] *Id*. at 531.
[29] *Id*. at 532.
[30] *Id*.
[31] 659 S.W.2d 30 (Tex. 1983).
[32] *Id*. at 31.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *Id*.
[37] *Id*. at 32.
[38] *Id*. at 31.
[39] *Id*. at 32 (citing *Lowe v. Texas Tech University*, 540 S.W.2d 297, 302 (Tex. 1976).
[40] *Id*. (emphasis in original).
[41] *Id*.

under the circumstances where there would be private liability."[42] Therefore, the Supreme Court held that "Mrs. Salcedo has alleged her loss was proximately caused by the negligence of the hospital district's employees in the use of tangible property."[43]

Applying the holdings from *Winters* and *Salcedo* to the situation involving a negligent social media post being made stating that no flooding is occurring in the area, resulting in a death, it is possible that a Texas court would find a valid cause of action could be alleged under the TTCA according to these facts. A plaintiff could allege that a computer is the tangible personal property that was used (or misused) by the river authority employee in posting the social media message, and that the proximate cause of the damages for the death were due to the negligence of the employee acting within the scope of his or her employment. The computer itself does not have to be defective; according to the court in *Salcedo*, a cause of action can arise simply if the computer was wrongly used by the river authority employee in the scope of his or her employment.

LIABILITY FOR FAILURE TO ALERT OR WARN

It is possible that a plaintiff could allege a governmental unit is liable for failure to post a flood warning on social media if the governmental unit has established a policy of making such posts. Go back to the example of the river authority that has been alerting followers on social media during rain events as to whether there were dangerous flooding conditions present. Instead of a defective post, assume instead that the river authority has been correctly posting regarding flooding events for some time, and its followers on social media have come to rely on these posts. Unfortunately, the river authority employee negligently fails to post on social media during one flooding event, and a person relying on those posts ventures out and dies in the flooding. This could result in a suit filed for nonuse of tangible personal property (the computer that was being used to make the river authority's social media posts) that was the proximate cause of that person's death.

The issue of "whether the Texas Tort Claims Act provides for the waiver of governmental immunity in cases involving the 'nonuse,' as opposed to 'misuse,' of tangible personal property" was discussed extensively in *Robinson v. Central Tex. Mental Health and Mental Retardation Ctr.*[44] In *Robinson*, a client of the Central Texas MHMR Center (Center) died from drowning while be supervised by the Center's employees.[45] The client's grandmother sued the Center, alleging that the Center was negligent for failing to provide the client with a life preserver, which was available and had been supplied to another patient.[46] The jury found the Center negligent, but on appeal the Center alleged that the waiver of immunity in Section 101.021(2) of the TTCA does not apply to non-use of tangible property.[47]

The Texas Supreme Court decided the *Robinson* case based on its prior interpretation set forth in *Lowe v. Texas Tech University*,[48] where "a football player allegedly entered a game with a knee

[42] *Id*. at 33.
[43] *Id*.
[44] 780 S.W.2d 169 (Tex. 1989).
[45] *Id*. at 169.
[46] *Id*.
[47] *Id*. at 170.
[48] 540 S.W.2d 297 (Tex. 1976).

brace, but took it off during the game on the coach's orders. He was thereafter injured."[49] The Supreme Court held that Lowe stated a cause of action under the TTCA, holding "that Lowe's allegations of a negligent failure to furnish him proper protective items of personal property, to be used as a part of the uniform furnished him, bring his case within the statutory waiver of immunity arising from some condition or use of personal property."[50] "In the case now before us, MHMR employees were responsible for seeing that those for whom they cared were dressed in proper swimming attire."[51] "A life preserver was just as much a part of Robinson's swimming attire as the knee brace was part of the uniform in *Lowe*."[52] Therefore, the court held that the failure to provide a life preserver gave rise to a cause of action under the waiver provided by the TTCA.[53]

Later the Texas Supreme Court reversed course in *Kassen v. Hartley*,[54] where it stated that "[w]e have never held that a non-use of property can support a claim under the Texas Tort Claims Act."[55] *Kassen* involved a TTCA claim for non-use of available drugs during emergency medical treatment.[56] The Texas Supreme Court went on to distinguish *Lowe* and *Robinson* from *Kassen* in *Kerrville State Hosp. v. Clark*,[57] where it defined the outer bounds of liability under the TTCA. In *Clark*, the Texas Supreme Court stated "[t]he precedential value of these cases is therefore limited to claims in which a plaintiff alleges that a state actor has provided property that lacks an integral safety component and that the lack of this integral component led to the plaintiff's injuries."[58]

Based on this precedent, it is questionable whether a failure to provide a social media alert for a flood, after repeated alerts in the past, would give rise to a cause of action under the TTCA. The computer being used to make the flooding posts would not be "lacking an integral safety component" as the Texas Supreme Court stated was required in *Clark*. Instead, this failure to post the alert would probably involve non-use of the tangible personal property, which the Supreme Court has expressed is not actionable. However, one can envision potential plaintiffs using artful pleading to couch their claims as "misuse" instead of "non-use" of the personal property, claiming that the flooding warning system malfunctioned, leading to there being no social media warning, which in turn lead to the wrongful death.

POSSIBLE DEFENSES

Sovereign/governmental immunity applies until a plaintiff demonstrates that immunity should be waived under the TTCA. Other than the general common law defense of immunity, other defense provided statutorily by the TTCA may apply depending on the fact situation.

The TTCA does not apply to a claim based on "the failure of a governmental unit to perform an act that the unit is not required by law to perform," or "a governmental unit's decision not to

[49] *Robinson*, 780 S.W.2d at 171 (citing *Lowe*, 540 S.W.2d at 300).
[50] *Id*.
[51] *Robinson*, 780 S.W.2d at 171.
[52] *Id*.
[53] *Id*.
[54] 887 S.W.2d 4 (Tex. 1994).
[55] *Id*. at 14.
[56] *Id*.
[57] 923 S.W.2d 582 (Tex. 1995).
[58] *Id*. at 585.

perform an act or on its failure to make a decision on the performance or nonperformance of an act if the law leaves the performance or nonperformance of the act to the discretion of the governmental unit."[59] In the context of social media alerts or warnings for flooding, one may assume that this provision would bar most TTCA suits. Most if not all Texas governmental units have no legislatively mandated duty to provide social media alerts regarding flooding conditions. If provided, it would be a discretionary decision by the governmental unit. However, "once a government has decided to perform a discretionary act, the act must be performed in a nonnegligent manner."[60]

This means that the initial order by the governmental unit making the decision not provide social media alerts for flooding would be covered by sovereign/governmental immunity, because the unit is not required to perform these alerts or warnings by law. Once the governmental unit makes the decision to provide those alerts, the alerts must be performed in a non-negligent manner, which could give rise to a suit under the TTCA.[61]

Section 101.060 of the TTCA contains an exception to the immunity waiver for: (1) "the failure of a governmental unit initially to place a traffic or road sign, signal, or warning device if the failure is the result of discretionary action of the governmental unit,"[62] (2) "the absence, condition, or malfunction of a traffic or road sign, signal, or warning device unless the absence, condition, or malfunction is not corrected by the responsible governmental unit within a reasonable time after notice,"[63] or (3) "the removal or destruction of a traffic or road sign, signal, or warning device by a third person unless the governmental unit fails to correct the removal or destruction within a reasonable time after actual notice."[64] These exceptions would not likely apply to flooding warnings or alerts that are distributed through social media, because "[t]he signs, signals, and warning devices referred to in this section are those used in connection with hazards normally connected with the use of a roadway."[65] It is doubtful that a court would interpret this statute so broadly as to apply to social media alerts for flooding, even though those alerts may be designed, as least in part, to keep people from traveling on roadways during unsafe conditions. However, this exception to the immunity waiver may be applicable to traditional sirens, warning signs, or barricades that are used or could be used by water districts and/or river authorities depending on the facts.

LIMITS TO LIABILITY SPECIFICALLY FOR MUNICIPALITIES

Before the passage of the TTCA, a municipality could be held liable under the common law for injuries or damages arising from "proprietary functions" the same as a private entity, but could not be held liable for "governmental functions" undertaken by the municipality. However, over time court opinions made the line between proprietary and governmental functions blurry. In Section

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[59] Tex. Civ. Prac. & Rem. Code § 101.056.
[60] *Cortez v. Weatherford Indep. School Dist.*, 925 S.W.2d 144, 149-50 (plaintiff was injured due to decision of school district to retrofit school buses with stop sign arms).
[61] *See e.g. Zambory v. City of Dallas*, 838 S.W.2d 580, 582-83 (Tex. App.—Dallas 1992, writ denied) (city liable for delays in making improvements to warning devices).
[62] Tex. Civ. Prac. & Rem. Code § 101.060(a)(1).
[63] Tex. Civ. Prac. & Rem. Code § 101.060(a)(2).
[64] Tex. Civ. Prac. & Rem. Code § 101.060(a)(3).
[65] Tex. Civ. Prac. & Rem. Code § 101.060(b).

101.0215 of the TTCA, the Texas Legislature sought to specifically define the difference between proprietary and governmental functions to clearly limit the liability of municipalities for the latter. It is important to note that Section 101.0215 of the TTCA only applies to governmental units that are municipalities.

Section 101.0215(a) defines "governmental functions" as "those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public."[66] The provision then provides a non exhaustive laundry list of governmental functions, including "dams and reservoirs,"[67] "warning signals,"[68] and "maintenance of traffic signals, signs, and hazards."[69] Section 101.0215(b) provides that the TTCA does not apply to the "liability of a municipality for damages arising from its proprietary functions, which are those functions that a municipality may, in its discretion, perform in the interest of the inhabitants of the municipality."[70] Subsection (c) then explicitly distinguishes proprietary from governmental activities.[71]

Section 101.0215 of the TTCA is only designed to distinguish between governmental and proprietary functions, and the provision itself is not an independent waiver of immunity. This creates a bifurcated system where a municipality can be held liable for proprietary functions under the common law, but the municipality can only be held liable for governmental functions under the TTCA if one of the TTCA's statutory waivers applies. If the action taken by the municipality is deemed a "proprietary function" under the definition in Section 101.0215(b), the TTCA does not apply, the municipality has no immunity, and the municipality has the same liability as a private person. If the action taken by the municipality is deemed a "governmental function" because it is in the laundry list or otherwise fits in the definition provided in Section 101.0215(a), the municipality is immune from suit unless a specific waiver of immunity in the TTCA, such as those previously discussed in Sections 101.021 or 101.022 of the TTCA, applies to the action.

The extent to which a municipality could be liable for flooding social media alerts under the TTCA is an open question, and would depend on whether these alerts were deemed a proprietary or governmental function. Subsection 101.0215(a)(20) of the TTCA, stating that "warning signals" are a governmental function, in theory could be interpreted to encompass these types of alerts. If so, a municipality would only be liable if one of the immunity waivers contained in the TTCA applies. However, it is also possible that a court could deem these social media alerts as a proprietary function (undertaken in municipality's discretion), meaning that the municipality could not claim immunity and would have the same liability as a private person.

LIMITS ON AMOUNT OF GOVERNMENTAL UNIT'S LIABILITY

The TTCA contains an explicit limitation on the amount of damages that can be awarded for liability. The limitations are staggered based on the type of governmental unit being sued. The

[66] Tex. Civ. Prac. & Rem. Code § 101.0215(a).
[67] Tex. Civ. Prac. & Rem. Code § 101.0215(a)(19).
[68] Tex. Civ. Prac. & Rem. Code § 101.0215(a)(20).
[69] Tex. Civ. Prac. & Rem. Code § 101.0215(a)(31).
[70] Tex. Civ. Prac. & Rem. Code § 101.0215(b).
[71] Tex. Civ. Prac. & Rem. Code § 101.0215(c).

liability of a "state government" under the TTCA "is limited to money damages in a maximum amount of $250,000 for each person and $500,000 for each single occurrence for bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property."[72] The liability of a unit of "local government" (excluding municipalities) "is limited to money damages in a maximum amount of $100,000 for each person and $300,000 for each single occurrence for bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property."[73] Liability of a "municipality" is "limited to money damages in a maximum amount of $250,000 for each person and $500,000 for each single occurrence for bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property."[74] Liability of an "emergency service organization"[75] is limited to "money damages in a maximum amount of $100,000 for each person and $300,000 for each single occurrence for bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property."[76]

CONCLUSION

In response to recent flooding issues in Texas, political subdivisions may consider implementing programs to provide alerts or warnings of flood-related dangers to the public. Before making the decision to provide these types of alerts or warnings, each entity should consider the potential lawsuits and liabilities that could arise from problems, mistakes or malfunctions associated with these programs. Although governmental immunity shields political subdivisions from judicial review for certain actions, it could be argued that the TTCA's waiver of immunity would apply to negligent flooding alerts/warnings or misuse of equipment as part of these programs that result in damages or harm. An entity that is considering undertaking the duty of providing flooding alerts or warnings to the public should perform an assessment of issues that could occur with their program and the potential legal ramifications of those issues depending on the law applicable in their jurisdiction. If the potential exposure is too high, the political subdivision could also consider engaging a third party to protect the public but also avoid legal concerns.

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[72] Tex. Civ. Prac. & Rem. Code § 101.023(a).
[73] Tex. Civ. Prac. & Rem. Code § 101.023(b).
[74] Tex. Civ. Prac. & Rem. Code § 101.023(c).
[75] An "Emergency service organization" means:
(A) a volunteer fire department, rescue squad, or an emergency medical services provider that is:
(i) operated by its members; and
(ii) exempt from state taxes by being listed as an exempt organization under Section 151.310 or 171.083, Tax Code; or
(B) a local emergency management or homeland security organization that is:
(i) formed and operated as a state resource in accordance with the statewide homeland security strategy developed by the governor under Section 421.002, Government Code; and
(ii) responsive to the Texas Division of Emergency Management in carrying out an all-hazards emergency management program under Section 418.112, Government Code.
Tex. Civ. Prac. & Rem. Code § 101.001(1).
[76] Tex. Civ. Prac. & Rem. Code § 101.023(d).